No. 80-1219

FILED
FEB 19 1981
ALEXANDER L. STEVAS
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES F. PURVIS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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The question presented in this federal income tax case is whether petitioner, who claims to be a pacifist, is entitled to a "war crimes deduction" in computing his income tax. Petitioner contends that under Article VI of the United States Constitution, a taxpayer may refuse to pay taxes if those taxes may be used for military purposes and if the taxpayer considers the military action or preparations of the United States to be in violation of international law. In addition, petitioner alleges that the payment of federal income taxes forces him to furnish money for a military enterprise in violation of 18 U.S.C. 960.[1] The pertinent facts

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[1] 18 U.S.C. 960, provides as follows:

Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or

are as follows: During the years in issue (1970-1972 and 1974), petitioner reported wages on his federal income tax returns, but he showed no taxable income or income tax due. Each year he claimed a "war crimes deduction" equal to the income he reported. On audit, the Commissioner of Internal Revenue disallowed these deductions and determined deficiencies in the amounts of $293, $774, $297 and $9,128 for 1970, 1971, 1972 and 1974, respectively. The Commissioner also imposed penalties for each year under Sections 6651(a) and 6653(a) of the Internal Revenue Code of 1954 (26 U.S.C.), for failure to file timely returns and for underpayment of taxes due to negligence or intentional disregard of rules and regulations (Pet. App. 2a).

In his petition filed in the Tax Court, petitioner alleged that it was his sincere conviction that he incurred no tax liability for the years in issue because he was resisting federal taxes in compliance with international law. He requested that the Commissioner be directed to refund to him all amounts withheld from his wages against his will while the Vietnam War was in progress. At the time of trial, petitioner amended his petition to allege that payment of his taxes would cause him to violate 18 U.S.C. 960, which prohibits individual military expeditions against foreign countries or people with whom the United States is at peace (Pet. App. 3a-4a). The Tax Court upheld the Commissioner (Pet. App. 1a) and the court of appeals affirmed[2] (Pet. App. 9a).

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enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

[2]The payment of taxes for military purposes has been frequently challenged on the ground that such a use violates the taxpayer's First Amendment right to freedom of religion in instances where the taxpayer objects to war on religious principles. That argument, however, has been repeatedly rejected. See, *e.g.*, *Lull* v. *Commissioner*, 602 F. 2d

Petitioner asserts (Pet. 7) that his taxes contribute to the support of military actions and preparations[3] in violation of international law. But it is well established that deductions are a matter of legislative grace. *New Colonial Ice Co.* v. *Helvering*, 292 U.S. 435, 440 (1934). Unless Congress makes express provision for a deduction, it is not allowable. *Deputy* v. *du Pont*, 308 U.S. 488, 493 (1940). The burden of clearly showing the right to the claimed deduction is on the taxpayer. *Interstate Transit Lines* v. *Commissioner*, 319 U.S. 590, 593 (1943). There is no provision in the Internal Revenue Code for a "war crimes deduction" and consequently, no such deduction is allowable.

Moreover, the act of paying taxes neither amounts to complicity in any war crime that petitioner may believe to have been committed by the United States nor renders petitioner a participant in a conspiracy to commit crimes against peace. *Egnal* v. *Commissioner*, 65 T.C. 255, 260 (1975). It is clear that with respect to any violation of international law that might have been, or might be, committed by the United States, petitioner is exempted from complicity by his remoteness and lack of direct involvement. Cf. *United States* v. *Malinowski*, 472 F. 2d 850, 856

1166 (4th Cir. 1979), cert. denied, 444 U.S. 1014 (1980); *Autenrieth* v. *Cullen*, 418 F. 2d 586 (9th Cir. 1969), cert. denied, 397 U.S. 1036 (1970); *Graves* v. *Commissioner*, 579 F. 2d 392 (6th Cir. 1978); *United States* v. *Haworth*, 386 F. Supp. 1099 (S.D. N.Y. 1974). Petitioner does not rely on the First Amendment in advancing his argument.

[3]Instead of attacking the legality of the Vietnam military action, petitioner now directs his argument against the nuclear armaments policy of the United States. Petitioner states in his petition (Pet. 11) that he "will present his case against nuclear planning here rather than Viet Nam war crimes * * *."

n.7 (3d Cir.), cert. denied, 411 U.S. 970 (1973); *United States* v. *Valentine*, 288 F. Supp. 957, 986-987 (D.P.R. 1968).[4]

Petitioner further argues (Pet. 44-55) that payment of his taxes would violate 18 U.S.C. 960, which provides that the knowing preparation for, or participation in, a military expedition against any nation with which the United States is at peace is a criminal offense. The statute is clearly directed to instances where individuals instigate military action without the sanction of the United States. *Wiborg* v. *United States*, 163 U.S. 632 (1896). Surely Congress never intended to subject persons to liability under Section 960 for merely paying their lawfully due taxes.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1981

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[4]These is no basis for petitioner's reliance (Pet. 34-40) on the so-called "Nuremberg Principles." It has been consistently held that the "Nuremberg Principles" furnish no basis for refusing to pay income taxes. *Farmer* v. *Rountree*, 149 F. Supp. 327 (M.D. Tenn. 1956), aff'd per curiam, 252 F. 2d 490 (6th Cir.), cert. denied, 357 U.S. 906 (1958); *Anthony* v. *Commissioner*, 66 T.C. 367 (1976), aff'd, 566 F. 2d 1168 (3d Cir. 1977), cert. denied, 436 U.S. 904 (1978); *Greenberg* v. *Commissioner*, 73 T.C. 806, 810 (1980); *Egnal* v. *Commissioner*, 65 T.C. 255 (1975); *Scheide* v. *Commissioner*, 65 T.C. 455, 458 (1975); *Russell* v. *Commissioner*, 60 T.C. 942 (1973); *Muste* v. *Commissioner*, 35 T.C. 913, 920 (1961); cf. *United States* v. *Malinowski*, 472 F. 2d 850, 856 (3d Cir.), cert. denied, 411 U.S. 970 (1973).